S.B.Civil Writ Petition No.229/2005
Champa Lal
vs
Addl. District Judge No.2, Bikaner & Ors.

DATE OF ORDER : - 17.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Manish Shishodia, for the petitioner.
Mr.S.C.Maloo, for the respondent-caveator

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Heard learned counsel for the parties.

The appellate court dismissed the application filed under Order 6 Rule 17 CPC vide order dated 10th Dec., 2004.

According to learned counsel for the petitioner, the petitioner came to know subsequently, after the decree passed by the trial court that the landlord purchased on property in the name of his son and his wife. At the time of moving application, the plaintiff was raising the construction of house on the said land. According to petitioner because of this fact, the plaintiff's need has come to an end. Learned counsel for the petitioner submits that it has also material bearing on the issue of comparative hardship. Despite all these, the trial court rejected the petitioner's application for amendment of the written statement on altogether different ground and by relying upon the judgment, which has no application to the facts of this case as the trial court relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Gaya Prasad Vs. Pradeep Srivastava reported in AIR 2001 SC 803.

I considered the submissions of learned counsel for the petitioner and perused the facts of the case.

Learned counsel for the respondent-landlord submits that the suit was filed with a specific plea that the plaintiff is in need of the house in dispute and his family members in total are about 17 and one of his sone is married.

In view of the above facts it is clear that the property has not been acquired by the plaintiff, but has been purchased by plaintiff's son and his (landlord’s) wife only. Therefore, if the first appellate court has rejected the petitioner's application, it cannot be said that the said order is without jurisdiction or by exceeding the power conferred upon the appellate court. However, it will be made clear that petitioner will be free to challenge the impugned order in appeal in case any occasion arises for the petitioner.

In view of the above, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-